IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 09.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.706 of 2006

Palani ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Magistrate and
District Collector,
Thiruvarur District,
Thiruvarur. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the petitioner's brother the detenu Balu S/o Vaithiyalingam, aged about 30 years before this Court now confined in Central Prison, Tiruchirapalli and set him at liberty and to call for the records pertaining to the order of detention passed in COC No.14/2006 dated 14.07.2006 passed by the second respondent and set aside the same.

For Petitioner : Ms.L.Srileka

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the brother of the detenu, by name Balu, who is detained as a ''Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982),

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by the impugned detention order dated 14.07.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the reference made in respect of contraband as well as Yamaha motor cycle seized under a cover of mahazar, has contended that though form-95, which is available at page 47 of the booklet supplied to the detenu refers seizure of two 750 ml capacity of bottles with 500 ml of arrack each, there is no reference to Yamaha motor cycle with registration No.TN 09 0312. She also contended that there is no material to show that Yamaha motor cycle was brought to the Court by way of valid document. In such circumstances, according to the learned counsel for the petitioner, the description of both contraband as well as Yamaha motor cycle in paragraph 3 of the grounds of detention would go to show the non application of mind on the part of the detaining authority.

4. In the light of the said contention, we have verified necessary averments in para 3 of the grounds of detention as well as Form-95, which is available at page 47 of the paper book supplied to the detenu. Though the learned Additional Public Prosecutor has brought to our notice that both the contraband and Yamaha motor cycle were seized under the mahazar dated 24.06.2006, admittedly Form-95 refers only two 750 ml. capacity of bottles with 500 ml of arrack each. In such circumstances, in the absence of any document to show that Yamaha motor cycle was also brought to the Court concerned, we are of the view that the description of the same in the grounds of detention amply show the non application of mind on the part of the detaining authority and we accept the contention raised by the learned counsel for the petitioner. On this ground, we quash the impugned order of detention.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

raa

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector, Thiruvarur District.

3. The Superintendent, Central Prison, Thiruchirapalli.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.T.Muruganantham,Advocate Sr 47429

PV (CO)
km/17.10.

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